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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,597	01/04/2002	Neal W. Luginbill	HRA-12807	6360
27505	7590	12/08/2004	EXAMINER	
RANKIN, HILL, PORTER & CLARK LLP 4080 ERIE STREET WILLOUGHBY, OH 44094-7836			CHIANG, JACK	
		ART UNIT		PAPER NUMBER
				2642

DATE MAILED: 12/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/037,597	LUGINBILL ET AL.
	Examiner	Art Unit
	Jack Chiang	2642

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 07 September 2004.  
 2a) This action is FINAL. 2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1 and 3-14 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1 and 3-14 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_

**CLAIMS**

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wakefield (US 5745565) in view of Peiker (US D460962).

Regarding claim 1, Wakefield shows a phone holder comprising:

An open topped outer member (2, 10) that is secured to a support (44);

An open topped inner member (60, see fig. 5) that is slidably received and secured to the outer member (2, 10);

The outer member (2, 10) is adapted to receive a phone having a first size (col. 2, lines 42-46) when the inner member is removed;

The inner member (60) is adapted to receive a phone having a second size (fig. 5).

Wakefield differs from the claimed invention in that the front wall of the members do not have an elongated opening through which a front of the phone is visible.

However, Peiker teaches providing a phone holder having an elongated opening (see fig. 1 in Peiker) on the front wall through which a front of the phone is visible.

Hence, it would have been obvious for one of ordinary skill in the art to modify Wakefield's holder with a front opening as taught by Peiker, such that the modification

allows the user to access the operational panel of the phone when it is stored in the holder (see fig. 1 in Peiker).

3. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Wakefield and Peiker in view of Klammer et al (US 6263080).

Regarding claim 3, the combination of Wakefield and Peiker shows the inner and outer members (see comments in claim 1).

the combination of Wakefield and Peiker differs from the claimed invention in that it does not show an opening on the bottom wall.

However, Klammer teaches providing an opening on the bottom wall (see 7).

Hence, it would have been obvious for one of ordinary skill in the art to modify the combination of Wakefield and Peiker with an opening on the bottom wall as taught by Klammer, such modification would enable the passage of a cable as it is commonly done in phone holders (col. 4, lines 39-40 in Klammer).

Regarding claim 4, the combination of Wakefield and Klammer shows:

Extending ears (64 in Wakefield).

4. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Wakefield, Peiker and Klammer in view of Osborn (US 6543637).

Regarding claim 5, the combination of Wakefield, Peiker and Klammer shows the inner and outer members (see comments in claim 1 above).

the combination of Wakefield, Peiker and Klammer differs from the claimed invention in that ribs and slots on the inner and outer members respectively.

However, Osborn teaches providing ribs and slots (54, 56) and slots (30, 26, 28) for mounting the inner and outer members (14, 12).

Hence, the concept of mounting the inner and outer members together is well taught by both Wakefield and Osborn. It would have been obvious for one of ordinary skill in the art to modify the combination of Wakefield, Peiker and Klammer with ribs and slots as taught by Osborn, such that to reinforce or to enhance the flexibility of the holding of the two members (col. 2, lines 35-38 in Osborn).

Regarding claim 6, the combination of Wakefield, Peiker, Klammer and Osborn shows: Rims for both the inner and outer members (42, 63 in Osborn).

5. Claims 7-8 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wakefield (US 5745565) in view of Troy (US 5556017).

Regarding claim 7, Wakefield shows a phone holder assembly comprising:  
A penal assembly (44);  
An open topped outer member (2, 10) that is secured to the penal assembly (44);  
An open topped inner member (60, see fig. 5) that is slidably received and secured to the outer member (2, 10);

The outer member (2, 10) is adapted to receive a phone having a first size (col. 2, lines 42-46) when the inner member is removed;

The inner member (60) is adapted to receive a phone having a second size (fig. 5).

Wakefield differs from the claimed invention in that the penal assembly is not pivotally movable between a closed position and an open position, in which the panel is disposed generally vertically in the closed position.

However, Troy shows a penal assembly (54, 54') which is pivotally movable between a closed position (54') and an open position (54), in which the panel is disposed generally vertically in the closed position.

Hence, it would have been obvious for one of ordinary skill in the art to modify Wakefield with a pivotal panel as taught by Troy, such that the modification allows the system to be stored in a storage bin when not in use (col. 1, lines 30-32 in Troy).

Regarding claims 8 and 14, the combination of Wakefield and Troy shows:

Tabs (48 on both side of 4 in Wakefield) for mounting.

The panel is disposed generally vertically in the closed position (see 54' in Troy).

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Wakefield and Troy in view of Peiker (US D460962).

Regarding claim 9, the combination of Wakefield and Troy shows a phone holder (see comments in claim 7).

the combination of Wakefield and Troy differs from the claimed invention in that the front wall of the members do not have an elongated opening through which a front of the phone is visible.

However, Peiker teaches providing a phone holder having an elongated opening (see fig. 1 in Peiker) on the front wall through which a front of the phone is visible.

Hence, it would have been obvious for one of ordinary skill in the art to modify the holder of the combination of Wakefield and Troy with a front opening as taught by Peiker, such that the modification allows the user to access the operational panel of the phone when it is stored in the holder (see fig. 1 in Peiker).

7. Claims 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Wakefield, Troy and Peiker in view of Klammer et al (US 6263080). Regarding claim 10, the combination of Wakefield, Troy and Peiker shows the inner and outer members (see comments in claim 7).

the combination of Wakefield, Troy and Peiker differs from the claimed invention in that it does not show an opening on the bottom wall.

However, Klammer teaches providing an opening on the bottom wall (see 7).

Hence, it would have been obvious for one of ordinary skill in the art to modify the combination of Wakefield, Troy and Peiker with an opening on the bottom wall as taught by Klammer, such modification would enable the passage of a cable as it is commonly done in phone holders (col. 4, lines 39-40 in Klammer).

Regarding claim 11, the combination of Wakefield, Troy, Peiker and Klammer, shows:  
Extending ears (64 in Wakefield).

8. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Wakefield, Troy, Peiker and Klammer in view of Osborn (US 6543637).

Regarding claim 12, the combination of Wakefield, Troy, Peiker and Klammer shows the inner and outer members (see comments in claim 1 above).  
the combination of Wakefield, Troy, Peiker and Klammer differs from the claimed invention in that ribs and slots on the inner and outer members respectively. However, Osborn teaches providing ribs and slots (54, 56) and slots (30, 26, 28) for mounting the inner and outer members (14, 12).

Hence, the concept of mounting the inner and outer members together is well taught by both Wakefield and Osborn. It would have been obvious for one of ordinary skill in the art to modify the combination of Wakefield, Troy, Peiker and Klammer with ribs and slots as taught by Osborn, such that to reinforce or to enhance the flexibility of the holding of the two members (col. 2, lines 35-38 in Osborn).

Regarding claim 13, the combination of Wakefield, Troy, Peiker, Klammer and Osborn shows:

Rims for both the inner and outer members (42, 63 in Osborn).

**ARGUMENT**

9. In response to the remarks filed on 09-07-04, applicant mainly argues about the amended open top, elongated opening, and the pivotal panel. These issues have been fully addressed in the rejections above, see comments above.

10. Applicant's arguments with respect to claims 1, 3-14 have been considered but are moot in view of the new ground(s) of rejection.

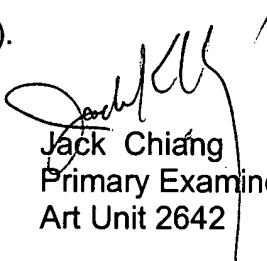
11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack Chiang whose telephone number is 703-305-4728. The examiner can normally be reached on Mon.-Fri. from 8:00 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad Matar, can be reached on 703-305-4731. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jack Chiang  
Primary Examiner  
Art Unit 2642